

# SENATE BILL No. 321

## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 34-11; IC 35-41-4.

**Synopsis:** Child sexual abuse statute of limitations. Eliminates the statute of limitations for civil and criminal actions involving the sexual abuse of a child.

**Effective:** July 1, 2004.

**Gard**

January 12, 2004, read first time and referred to Committee on Rules and Legislative Procedure.

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Introduced

Second Regular Session 113th General Assembly (2004)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2003 Regular Session of the General Assembly.

## SENATE BILL No. 321

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 34-11-2-4 IS AMENDED TO READ AS  
2 FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 4. **Except as provided**  
3 **in section 13 of this chapter**, an action for:

4 (1) injury to person or character;  
5 (2) injury to personal property; or  
6 (3) a forfeiture of penalty given by statute;  
7 must be commenced within two (2) years after the cause of action  
8 accrues.

9 SECTION 2. IC 34-11-2-13 IS ADDED TO THE INDIANA CODE  
10 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
11 1, 2004]: Sec 13. **An individual may commence a civil action at any**  
12 **time against a party if:**

13 (1) **the party:**

14 (A) **was convicted of a crime under IC 35-42-4 or**  
15 **IC 35-46-1-3; or**

16 (B) **knowingly or intentionally aided, induced, or caused**  
17 **another person to commit a crime under IC 35-42-4 or**



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- 1           **IC 35-46-1-3 and the other person was convicted of the**  
 2           **crime under IC 35-42-4 or IC 35-46-1-3; and**  
 3           **(2) the individual commencing the action was:**  
 4           **(A) the victim of the crime under IC 35-42-4 or**  
 5           **IC 35-46-1-3; and**  
 6           **(B) less than eighteen (18) years of age at the time of the**  
 7           **offense.**

8           SECTION 3. IC 34-11-6-1 IS AMENDED TO READ AS  
 9           FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 1. **Except as provided**  
 10          **in IC 34-11-2-13**, a person who is under legal disabilities when the  
 11          cause of action accrues may bring the action within two (2) years after  
 12          the disability is removed.

13          SECTION 4. IC 35-41-4-2, AS AMENDED BY P.L.1-2002,  
 14          SECTION 149, IS AMENDED TO READ AS FOLLOWS  
 15          [EFFECTIVE JULY 1, 2004]: Sec. 2. (a) Except as otherwise provided  
 16          in this section, a prosecution for an offense is barred unless it is  
 17          commenced:

18               (1) within five (5) years after the commission of a Class B, Class  
 19               C, or Class D felony; or

20               (2) within two (2) years after the commission of a misdemeanor.

21          (b) A prosecution for a Class B or Class C felony that would  
 22          otherwise be barred under this section may be commenced within one  
 23          (1) year after the earlier of the date on which the state:

24               (1) first discovers the identity of the offender with DNA  
 25               (deoxyribonucleic acid) evidence; or

26               (2) could have discovered the identity of the offender with DNA  
 27               (deoxyribonucleic acid) evidence by the exercise of due diligence.

28          However, for a Class B or Class C felony in which the state first  
 29          discovered the identity of an offender with DNA (deoxyribonucleic  
 30          acid) evidence after the time otherwise allowed for prosecution and  
 31          before July 1, 2001, the one (1) year period provided in this subsection  
 32          is extended to July 1, 2002.

33          (c) A prosecution for a Class A felony may be commenced at any  
 34          time.

35          (d) A prosecution for murder may be commenced:

36               (1) at any time; and

37               (2) regardless of the amount of time that passes between:

38                   (A) the date a person allegedly commits the elements of  
 39                   murder; and

40                   (B) the date the alleged victim of the murder dies.

41          (e) A prosecution for the following offenses ~~is barred unless may be~~  
 42          commenced ~~before the date that the alleged victim of the offense~~

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reaches thirty-one (31) years of age: at any time:

- (1) IC 35-42-4-3(a) (Child molesting).
- (2) IC 35-42-4-5 (Vicarious sexual gratification).
- (3) IC 35-42-4-6 (Child solicitation).
- (4) IC 35-42-4-7 (Child seduction).
- (5) IC 35-46-1-3 (Incest).

(f) Notwithstanding subsection (e)(1), a prosecution for child molesting under IC 35-42-4-3(c) or IC 35-42-4-3(d) where a person who is at least sixteen (16) years of age allegedly commits the offense against a child who is not more than two (2) years younger than the older person, is barred unless commenced within five (5) years after the commission of the offense.

(g) A prosecution for forgery of an instrument for payment of money, or for the uttering of a forged instrument, under IC 35-43-5-2, is barred unless it is commenced within five (5) years after the maturity of the instrument.

(h) If a complaint, indictment, or information is dismissed because of an error, defect, insufficiency, or irregularity, a new prosecution may be commenced within ninety (90) days after the dismissal even if the period of limitation has expired at the time of dismissal, or will expire within ninety (90) days after the dismissal.

(i) The period within which a prosecution must be commenced does not include any period in which:

- (1) the accused person is not usually and publicly resident in Indiana or so conceals himself that process cannot be served on him;
- (2) the accused person conceals evidence of the offense, and evidence sufficient to charge him with that offense is unknown to the prosecuting authority and could not have been discovered by that authority by exercise of due diligence; or
- (3) the accused person is a person elected or appointed to office under statute or constitution, if the offense charged is theft or conversion of public funds or bribery while in public office.

(j) For purposes of tolling the period of limitation only, a prosecution is considered commenced on the earliest of these dates:

- (1) The date of filing of an indictment, information, or complaint before a court having jurisdiction.
- (2) The date of issuance of a valid arrest warrant.
- (3) The date of arrest of the accused person by a law enforcement officer without a warrant, if the officer has authority to make the arrest.

(k) A prosecution is considered timely commenced for any

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1 offense to which the defendant enters a plea of guilty, notwithstanding  
2 that the period of limitation has expired.

3 SECTION 5. [EFFECTIVE JULY 1, 2004] **The amendment of**  
4 **IC 35-41-4-2(f) by this act does not apply to offenses committed**  
5 **under IC 35-42-4-3(c) and IC 35-42-4-3(d) as those provisions**  
6 **existed before the amendment of IC 35-42-4-3 by P.L.79-1994,**  
7 **SECTION 12.**

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